

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
deCODE genetics, Inc.<sup>1</sup> )  
Debtor. ) Re: Docket No. 4  
)  
) Hearing Date: December 9, 2009 at 10:30 a.m.  
) Objection Deadline: December 4, 2009 at 4:00 p.m.

**NOTICE OF (A) ENTRY OF INTERIM ORDER PURSUANT TO  
SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE  
FOR AUTHORIZATION TO PAY PREPETITION TAXES  
AND FEES AND (B) SCHEDULING OF A FINAL HEARING THEREON**

PLEASE TAKE NOTICE that on November 16, 2009, deCODE genetics, Inc. (“the Debtor”) filed the *Motion of Debtor and Debtor in Possession Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code for Authorization to Pay Prepetition Taxes and Fees* [Docket No. 4] (the “Tax Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”). A copy of the Tax Motion is attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that on November 18, 2009, the Court entered the *Interim Order Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code for Authorization to Pay Prepetition Taxes and Fees* [Docket No. 22] (the “Interim Tax Order”). A copy of the Interim Tax Order is attached hereto as Exhibit B.

PLEASE TAKE FURTHER NOTICE that a further hearing with respect to the final relief requested in the Tax Motion will be held on **December 9, 2009 at 10:30 a.m. (Eastern Standard Time)** before The Honorable Peter J. Walsh at the Bankruptcy Court, 824 Market Street, 6<sup>th</sup> Floor, Courtroom 2, Wilmington, Delaware 19801.

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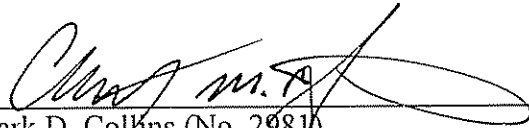
<sup>1</sup> The debtor in this case, along with the last four digits of the federal tax identification number for the debtor, is deCODE genetics, Inc (6704).

PLEASE TAKE FURTHER NOTICE that objections or responses to the final relief requested in the Tax Motion, if any, must be made in writing, filed with the Bankruptcy Court, and served so as to be received by: (a) the Debtor, c/o deCODE genetics, Inc., Sturlugata 8, Reykavik, Iceland (Attn: Kari Stefansson); (b) counsel to the Debtor, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. and Christopher M. Samis, Esq.); (c) corporate counsel to the Debtor, Mintz Levin Cohn Ferris Glovsky and Popeo P.C., One Financial Center, Boston, MA 02111 (Attn: Richard P. Kelly, Esq.) and Stevens & Lee P.C., 1105 N. Market Street, Wilmington DE, 19801 (Attn: Marsha Novick, Esq.); (d) counsel to any committee appointed in these chapter 11 cases; (e) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: David L. Buchbinder, Esq.); (f) counsel to the prepetition and postpetition lender, O'Melveny & Myers LLP 400 South Hope Street, Los Angeles, CA 90071 (Attn: Andrew M. Parlen, Esq.); and (g) local counsel to the prepetition and postpetition lender, Ciardi, Ciardi & Astin, P.C. 919 Market Street, Wilmington, DE 19801 (Attn: Carl Neff, Esq.), on or before **December 4, 2009 at 4:00 p.m. (Eastern Standard Time)**.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE TAX MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE FINAL RELIEF REQUESTED IN THE TAX MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: November 18, 2009  
Wilmington, Delaware

Respectfully submitted,



Mark D. Collins (No. 2981)  
Michael J. Merchant (No. 3854)  
Christopher M. Samis (No. 4909)  
RICHARDS, LAYTON & FINGER, P.A.  
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*Proposed Attorneys for the Debtor and  
Debtor in Possession*

**EXHIBIT A**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
deCODE genetics, Inc.<sup>1</sup> ) Case No. 09-\_\_\_\_\_ ( )  
Debtor. )

**MOTION OF DEBTOR AND DEBTOR IN POSSESSION PURSUANT  
TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE  
FOR AUTHORIZATION TO PAY PREPETITION TAXES AND FEES**

The above-captioned debtor and debtor in possession (the “Debtor”) files this motion (the “Motion”) for entry of interim and final orders, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, (a) authorizing, but not requiring, the Debtor to remit and pay prepetition franchise, income, corporate and other taxes and related fees as the Debtor, in its discretion, deems necessary; and (b) authorizing financial institutions to receive, process, honor and pay all checks issued and electronic payment requests made relating to the foregoing. In support of the Motion, the Debtor relies on the *Affidavit of Dr. Kari Stefansson, Chief Executive Officer and President of Debtor and Debtor in Possession, in Support of the First Day Motions* (the “First Day Affidavit”) and respectfully states as follows:

**JURISDICTION**

This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> The debtor in this case, along with the last four digits of the federal tax identification number for the debtor, is deCODE genetics, Inc. (6704).

## GENERAL BACKGROUND

1. On November 16, 2009 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code").

2. The Debtor continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or official committee of unsecured creditors has been appointed in this chapter 11 case.

### **A. Overview of Debtor's Businesses and Performance**

3. The Debtor was incorporated in 1996. Through its subsidiary Islensk erf dagreining ehf ("ehf"), an Icelandic private limited company, it is engaged in gene discovery with the goal of bringing to market DNA-based reference laboratory tests and consumer genome analysis services to assess individual risk of common diseases. ehf also provides genomics services to third parties. In 2002, the Debtor acquired MediChem Life Sciences, Inc. ("MediChem"). Through MediChem's subsidiaries, deCODE Chemistry, Inc. ("Chemistry"), deCODE Biostructures, Inc. ("Biostructures") and Emerald BioSystems, Inc. ("Emerald"), the Debtor expanded its business to include the discovery and commercialization of novel therapeutics designed against certain targets identified in its population based gene discovery work. In addition, these subsidiaries offer drug discovery services and products to third-party customers. In September 2009, the Debtor terminated operations of Chemistry and, in November 2009, it sold Biostructures and Emerald to an unrelated third party.

4. The Debtor has developed and is marketing six DNA-based diagnostic tests for assessing individual risk of disease. It also operates deCODEme, a consumer genetics analysis service. The Debtor's lead drug development programs include DG041 for the prevention of arterial thrombosis, G051 and DG031 for the prevention of heart attack and DG071 for

Alzheimer's and other cognitive disorders, the intellectual property underlying which is held substantially by ehf. These compounds are in clinical development and the Debtor has been seeking licensing or other collaborative arrangements for ehf to advance the development of these programs or, alternatively, an outright sale of one or more of the compounds.

5. Since its inception, the Debtor has devoted its resources primarily to research and development. It incurred a net loss of \$80.9 million, \$95.5 million and \$85.5 million in 2008, 2007 and 2006, respectively, and had an accumulated deficit of \$712.2 million as of December 31, 2008. Indeed, the Debtor has never generated a profit and has not generated significant revenues except for payments received in connection with its research and development collaborations with pharmaceutical companies, from contract services, the sale of Emerald products and instruments and under grants. The Debtor's research and development expenditures and general and administrative costs have exceeded its revenue to date. Moreover, the Debtor believes that significant additional amounts will be required to develop its diagnostics and deCODEme™ products and services, fund research and development and undertake product development (including drug development and related clinical trials). The Debtor does not expect to receive material revenues from commercial sales of products developed using its technology in the near term and expects to incur net losses for several years.

6. The Debtor's corporate headquarters and ehf's management staff and gene discovery business are located in Reykjavik, Iceland in an approximately 150,000 square-foot building which is leased by ehf under a 15-year operating lease expiring in 2020. The lease is in payment default because rent was not paid for October 2009. The landlord has not retaken possession of the premises but has obtained from the Reykjavik District Court a temporary restraining order to prevent ehf from transferring its Icelandic and US patent rights in an

apparent attempt to recover amounts allegedly due and owing under the lease. The Debtor and ehf continue to occupy the premises and conduct their business activities therefrom. The facilities of Chemistry are located in Woodridge, Illinois in a 103,000 square-foot facility leased under a 17-year lease expiring in 2024. The lease is in default as Chemistry was unable to and did not pay rent for the month of September 2009 or thereafter. As a consequence, the landlord has terminated the lease and, the Debtor believes, drawn on a letter of credit, which had been arranged and secured by \$5 million of cash collateral. The Debtor was a lease guarantor and, as such, posted the cash collateral.

**B. The Debtor's Capital and Debt Structure**

*(i) Prepetition Debt*

7. In April 2004 and November 2006, the Debtor issued an aggregate of \$230 million of unsecured 3.5% Senior Convertible Notes due April 15, 2011 (the "Notes") pursuant to Indentures dated April 14, 2004 and November 17, 2006. The Bank of New York is the indenture trustee for the Notes. A semi-annual payment of interest on the Notes was due and payable on or about October 15, 2009, but was not paid prior to the expiration of a 30-day grace period that ran on November 16, 2009. The Debtor did not have the financial wherewithal to make and did not make such interest payment, including by borrowing under either the Bridge Loan or the DIP Loan (each as described below).

*(ii) Bridge Loan*

8. Additionally, on September 11, 2009, the Debtor entered into a bridge loan facility (the "Bridge Loan") with Saga Investments LLC ("Saga"). The Debtor and its subsidiaries, MediChem and Biostructures (collectively, the "Prepetition Borrowers"), entered into that certain Secured Promissory Note dated as of September 11, 2009 (the "Original Note"), whereby Saga agreed to provide the Prepetition Borrowers with a secured loan in the

original principal amount of \$700,000 (the "Existing Credit Facilities"). The other direct and indirect subsidiaries of the Debtor (the "Guarantors") guaranteed the Prepetition Borrowers' obligations under the Original Note, as it may be amended from time to time. Biostructures and Emerald were released from their obligations in connection with the Note at the time of their sale. The Original Note was subsequently amended and restated on nine occasions to increase the principal amount of the Original Note to \$5.424 million. Interest under the Amended and Restated Note is payable in arrears on the first day of each month at a rate of 8% by increasing the then aggregate principal amount of the loan outstanding on such date. Moreover, the outstanding obligations under the Amended and Restated Note are secured by liens on substantially all of the Prepetition Borrowers' and Guarantors' assets. As of the Petition Date, the aggregate amount outstanding under the Amended and Restated Note is approximately \$3,055,262.20.

*(iii) Capital Structure*

9. As of the Petition Date, the Debtor has approximately 61.4 million shares of common stock outstanding.

**C. Events Leading to the Filing of the Chapter 11 Case**

*(i) The Debtor's Liquidity Needs*

10. As described above, the Debtor has not generated material revenue and needs to obtain financing in order to continue operations. During 2008, the Debtor sought to obtain financing through collaborations and licensing arrangements, public or private equity offerings, and other forms of financing without sufficient success to sustain its operations. The Debtor's situation was worsened by the global economic crisis and its effect on capital markets and by the illiquidity and decline in value of approximately \$30 million of auction-rate securities ("ARS") in which Lehman Brothers, Inc. had invested a portion of the Debtor's cash resources in

violation of the Debtor's cash management instructions. It also sought, without success, to restructure the Notes.

*(ii) Marketing Efforts*

11. In the summer of 2008, the Debtor began a review of its long-term business strategy and in mid-August 2008 engaged the Stanford Group Company ("SGC") as financial advisor to, among other things, advise and assist it in evaluating strategic alternatives and identifying buyers and partners for business units, programs and intellectual property and pursue possible advantageous transactions and relationships. SGC and management of the Debtor contacted, and discussed or negotiated with, numerous potential partners and buyers for the Debtor's various business units and assets, as well as with large holders of the Notes. After SCG collapsed in February 2009 for reasons unrelated to this case, management, under the oversight and direction of a special committee of the board of directors (the "Special Committee") that was established in October 2008, continued such efforts but was unable to consummate a material transaction or restructure the Notes. The Debtor was able to meet some of its short-term liquidity needs through the sale of rights to a diagnostics test to an industry player and the sale of ARS to an Icelandic bank, but the net proceeds only provided interim funding, which was soon exhausted. In the Winter and Spring of 2009, the Debtor's long-term economic prospects worsened considerably as operating costs continued significantly to surpass cash flow.

12. Starting in late March 2009, the Debtor, through management and a representative of the Special Committee, commenced discussions with investors in Saga about the possibility of a transaction to restructure the Notes, obtain funding from such investors and continue the Debtor's gene discovery business. The Debtor continued its discussions with such investors, as well as other contacted parties, into the summer of 2009. In August 2009, investors in Saga indicated a willingness to pursue a sale transaction under section 363 of the Bankruptcy Code

whereby Saga would acquire the capital stock of ehf, any assets related to ehf's business held by the Debtor or its non-Debtor U.S. subsidiaries and some or all of the drug compounds.

13. As discussed above, on September 11, 2009, Saga and the Debtor entered into the Original Note implementing the Bridge Loan. At about such time, the Special Committee engaged restructuring professionals from a major accounting firm to advise and assist the Debtor in evaluating the proposed transaction with Saga, as well as any alternative transactions that may be available, and to assist the Debtor in navigating through the pre-bankruptcy and bankruptcy processes. On September 23, 2009, the parties entered into a nonbinding term sheet (the "Term Sheet") that contemplated a proposed sale transaction, an amendment and extension of the secured bridge loan and the provision of debtor in possession secured financing, with Saga serving as the DIP lender, in connection with a chapter 11 filing. The Term Sheet also contained a binding exclusive dealings provision that terminated on October 8, 2009. The Debtor and Saga proceeded to negotiate a definitive sale transaction agreement, but did not enter into such an agreement until November 16, 2009.

14. Following the expiration of the exclusive dealings period, the Debtor, through the Special Committee and certain members of management, with the assistance of its restructuring professionals, identified a list of strategic and financial parties (in addition to Saga) that it viewed as potential purchasers of the Debtors' assets (either as an alternative to Saga or as a competing bidder through an auction process). Over a period of several weeks until the present, contacts have been made and discussions have been held in some cases with approximately 15 of such potential transactional parties but without an alternative transaction being entered into.

*(iii) The Stalking Horse APA*

15. The Debtor's efforts culminated in the negotiation and execution of an asset purchase agreement with Saga (the "Stalking Horse APA") for the sale of (a) all of the equity

interests of ehf and (b) all intellectual property rights and other tangible and intangible assets of the Debtor and its direct and indirect U.S. subsidiaries related to (i) the business conducted by ehf and its subsidiary or (ii) the drug compounds that the Debtor has historically designated as DG041, DG051 and DG071. The Debtor has also entered into a debtor-in-possession financing credit agreement (the “DIP Credit Agreement”) with Saga whereby Saga, as lender, will provide a loan in an aggregate amount not to exceed \$11,117,928 in accordance with an agreed-upon budget. The Debtor believes that the DIP Credit Agreement provides the Debtor with sufficient liquidity to commence and consummate a sale process under section 363 of the Bankruptcy Code that will enable the Debtor to maximize value for creditors and other interested parties. The Stalking Horse APA will serve as the basis for this Court supervised sale process that will involve an auction designed to maximize the value of the Debtor’s estate for the benefit of its economic stakeholders. Following consummation of the proposed sale, the liquidation of the Debtor and its subsidiaries will be completed pursuant to a plan of liquidation for the benefit of the Debtor’s economic stakeholders.

### **SPECIFIC BACKGROUND**

16. The Debtor seeks authority to pay prepetition franchise, income, corporate and other taxes (collectively, the “Taxes”) as well as any late, filing or other fees (collectively, the “Fees”) to the applicable taxing authorities (collectively, the “Taxing Authorities”) in the ordinary course of the Debtor’s business.<sup>2</sup> As set forth in the First Day Affidavit, in the ordinary course of business, the Debtor incurs taxes, including, but not limited to, franchise, income, corporate and other taxes due to various U.S. taxing authorities. The Debtor pays the Taxes

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<sup>2</sup> The Debtor has a taxable presence in California, Delaware, Georgia, Illinois, Maryland, Massachusetts, Michigan, New Mexico, New York and New York City.

quarterly or annually to the respective Taxing Authorities, in each case as required by applicable laws and regulations.

17. The Debtor seeks the relief requested herein in the event and to the extent that any Taxes and Fees accrued prepetition have not been paid or processed prepetition, or were paid in an amount that was less than is actually owed, or in the event that any payments made prepetition were rejected, lost or otherwise not received in full by any Taxing Authorities. Further, there may be taxes incurred prepetition that will come due shortly after the Petition Date. The Debtor estimates that the aggregate amount of prepetition Taxes and Fees owing to the various Taxing Authorities will not exceed \$200,000. Accordingly, the Debtor seeks authority to pay the Taxing Authorities \$10,000 on an interim basis and an aggregate amount of \$200,000 on a final basis (inclusive of the \$10,000 interim authority) on account of prepetition Taxes and Fees.

**A. Income Taxes**

18. As a result of its operations throughout the United States, the Debtor incurs income tax liabilities due to the United States government and certain U.S. states (collectively, the "Income Taxes"). The Debtor estimates that it does not have any Income Tax liability for the period prior to and including the Petition Date. However, in an abundance of caution, to the extent that the Debtor has miscalculated the amounts due, paid in an amount that was less than is actually owed, or in the event that any payments made prepetition were rejected, lost or otherwise received in full by any Taxing Authorities, the Debtor has provided for a \$15,000 cushion within the final authority it seeks herein on account of unknown Income Tax liabilities.

**B. Franchise Taxes**

19. The Debtor pays franchise taxes and *de minimis* registration Fees (collectively, the "Franchise Taxes") to certain of the Taxing Authorities, thus authorizing the Debtor to operate its business in the applicable jurisdiction. Some states assess a flat Franchise Tax on all

business, while other states assess a Franchise Tax based upon some measure of income, gross receipts, net worth or other measure of value. The Debtor's failure to pay Franchise Taxes could cause some states to challenge the Debtor's right to operate within their jurisdiction. Addressing any subsequent action taken by the those states would be costly, place an administrative burden on management, and divert management's attention from the reorganization process. The Debtor estimates that it currently owes an aggregate amount of approximately \$10,000 in Franchise Taxes to certain of the Taxing Authorities for periods prior to and including the Petition Date. Additionally, the debtor estimates that it will owe approximately \$130,000 in Franchise Taxes for the year 2009, some or all of which may have accrued prior to the Petition Date.

**C. Corporate Taxes**

20. As a result of its operations within certain states, the Debtor incurs corporate tax liabilities due to those states (collectively, the "Corporate Taxes"). The Debtor estimates that it does not have any Corporate Tax liability for the period prior to and including the Petition Date. However, in an abundance of caution, to the extent that the Debtor has miscalculated the amounts due, paid in an amount that was less than is actually owed, or in the event that any payments made prepetition were rejected, lost or otherwise received in full by any Taxing Authorities, the Debtor has provided for a \$15,000 cushion within the final authority it seeks herein on account of unknown Corporate Tax liabilities.

**D. Other Taxes**

21. As a result of its operations within certain states, the Debtor incurs certain other taxes including but not limited to Metropolitan Transit Authority surcharges (the "Other Taxes"). The Debtor estimates that it does not have any such Other Tax liability for the period prior to and including the Petition Date. However, in an abundance of caution, to the extent that the Debtor has miscalculated the amounts due, paid in an amount that was less than is actually owed, or in

the event that any payments made prepetition were rejected, lost or otherwise received in full by any Taxing Authorities, the Debtor has provided for a \$15,000 cushion within the final authority it seeks herein on account of other unknown Other Tax liabilities.

### **RELIEF REQUESTED**

22. By this Motion, the Debtor seeks authorization to pay all Taxes to the Taxing Authorities, including any franchise, income, corporate and other taxes as well as any late, filing or other Fees determined upon audit to be owed for periods prior to the Petition Date.

23. To the extent that an issued check or an electronic funds transfer requested prior to the Petition Date has not cleared the bank as of the Petition Date, the Debtor seeks entry of an order (a) authorizing all applicable banks and financial institutions (collectively, the "Cash Management Banks") to honor such checks and/or fund transfer requests, and (b) authorizing the Debtor to issue postpetition replacement checks, submit replacement fund transfer requests, or provide other means of payment to the Taxing Authorities to the extent necessary to pay all tax obligations.

### **BASIS FOR RELIEF**

#### **A. The Court Should Permit the Debtor, in its Discretion, to Pay Taxes and Fees**

24. There are four bases for granting the relief requested in this motion: (a) portions of the Taxes and Fees may be entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code; (b) governmental entities may take actions against (i) the Debtor, suspending the Debtor's operations, filing liens, seeking to lift the automatic stay or pursuing other remedies that will harm the estate and/or (ii) the Debtor's officers and directors for unpaid taxes, both distracting the officers and directors from the Debtor's reorganization efforts; (c) the Bankruptcy Code gives the Debtor authority to remit payment on account of such Taxes and Fees in the

ordinary course of business; and (d) section 105 of the Bankruptcy Code and the Court's general equitable powers permit the Court to grant the relief sought.

25. Furthermore, state authorities could assert that the Debtor's officers and directors be held personally liable if the Debtor fails to meet the obligations imposed upon them to remit Taxes and Fees.<sup>3</sup> To the extent such accrued Taxes and Fees of the Debtor were unpaid as of the Petition Date, the Debtor's officers and directors may be subject to lawsuits in certain jurisdictions during the pendency of this chapter 11 case, even if the failure to pay such Taxes and Fees was not a result of any malfeasance on their part. Such potential lawsuits would prove extremely distracting for the Debtor, for the named officers and directors, and for this Court, which may be asked to entertain various motions seeking injunctions with respect to the potential state court actions. Therefore, it is in the best interests of the Debtor's estate and the Debtor's bankruptcy process to eliminate the possibility of the foregoing distractions. As discussed above, the Taxes and Fees either are or may be entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code and, therefore, must be paid in full under section 1129(a)(9)(C) of the Bankruptcy Code to confirm any plan. Thus, the payment of the Taxes and Fees at this time only affects the timing of the payment and does not prejudice the rights of other creditors.

26. The Court may authorize the Debtor to pay the Taxes and Fees under section 363(b) of the Bankruptcy Code, which provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming

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<sup>3</sup> See supra note 4.

lower court order authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code); In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill. Dec. 9, 2002) (authorizing payment of prepetition claims under section 363 of the Bankruptcy Code as out-of-the-ordinary-course transaction). To do so, “the debtor must articulate some business justification, other than the mere appeasement of major creditors.” Ionosphere Clubs, 98 B.R. at 175. As discussed above, the Debtor’s failure to pay the Taxes and Fees could have a material adverse impact on its ability to operate in the ordinary course of business.

27. Further, section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of section 105(a) of the Bankruptcy Code is “to assure the bankruptcy court’s power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” See 2 COLLIER ON BANKRUPTCY ¶ 105.01 (15th ed. rev. 2003). Thus, section 105 of the Bankruptcy Code essentially codifies the bankruptcy court’s inherent equitable powers. The relief requested in this Motion is critical to the Debtor’s operations and reorganization and therefore is justified under section 105(a) of the Bankruptcy Code.

28. In numerous reorganization cases, the bankruptcy court in this district has exercised its equitable powers under section 105 of the Bankruptcy Code to authorize debtors to pay prepetition tax obligations.<sup>4</sup> The Debtor submits that the present circumstances warrant similar relief in this chapter 11 case.

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<sup>4</sup> See, e.g., In re Filene’s Basement, Inc., Case No. 09-11525 (MFW) (Bankr. D. Del. May 5, 2009); In re AbitibiBowater Inc., Case No. 09-11296 (KJC) (Bankr. D. Del. Apr. 17, 2009); In re Sportsman’s Warehouse, Inc., Case No. 09-10990 (CSS) (Bankr. D. Del. Mar. 23, 2009); In re Drug Fair Group, Inc., Case No. 09-10897 (BLS) (Walrath, J.) (Bankr. D. Del. Mar. 20, 2009); In re The Fairchild Corporation, Case No. 09-10899 (CSS) (Bankr. D. Del. Mar. 20, 2009); In re Masonite Corporation, Case No. 09-10844 (PJW) (Bankr. D. Del. Mar. 17, 2009); In re Ritz Camera Centers, Inc., Case No. 09-10617 (MFW) (Bankr. D. Del. Feb. 24, 2009); In re Nortel Networks Inc., Case No. 09-10138 (KG) (Bankr. D. Del. Jan. 15, 2009); In re Tribune Company, Case No. 08-13141 (KJC) (Bankr. D. Del. Dec. 10, 2008); In re Linens Holding Co., Case No. 08-10832 (CSS) (Bankr. D. Del. May 2, 2008); In re  
(Continued)

29. Granting the relief requested is appropriate and in the best interests of the Debtor, its estate and its creditors. However, nothing in this Motion or the order granting this Motion should be construed as impairing the Debtor's ability to contest the amounts of any Taxes and Fees allegedly owing to the various Taxing Authorities.

**B. The Court Should Authorize Banks to Honor the Debtor's Tax and Fee Payments**

30. The Debtor also requests that all Cash Management Banks be authorized to receive, process, honor and pay all checks presented for payment, and to honor all electronic payment requests made by the Debtor related to the prepetition obligations described herein, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtor further requests that all Cash Management Banks be authorized to rely on the Debtor's designation of any particular check or electronic payment request as approved pursuant to this Motion. The Debtor has sufficient cash reserves to promptly pay all prepetition obligations set forth herein on an ongoing basis and in the ordinary course of its business.

31. Nothing in this Motion should be construed as impairing the Debtor's right to contest the amount of any Tax or Fee that may be owed to any Taxing Authority, and the Debtor expressly reserves all of its rights with respect thereto.

32. Based on the foregoing, the Debtor submits that the relief requested is necessary and appropriate, is in the best interests of its estate and creditors, and should be granted in all respects.

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Lillian Vernon Corporation, Case No. 08-10323 (BLS) (Bankr. D. Del. Feb. 21, 2008); In re Sharper Image Corporation, Case No. 08-10322 (KG) (Bankr. D. Del. Feb. 20, 2008); In re Comdial Corporation, Case No. 05-11492 (CSS) (MFW) (Bankr. D. Del. May 27, 2005); In re Ultimate Electronics, Inc., et al., Case No. 05-10104 (PJW) (Bankr. D. Del. Jan. 13, 2005).

### BANKRUPTCY RULE 6003 COMPLIANCE

33. The Debtor further submits that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor for the reasons set forth herein, Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") has been satisfied.

### REQUEST FOR WAIVER OF STAY

34. The Debtor further seeks a waiver of any stay of the effectiveness of the order approving this Motion pursuant to Rule 6004(h) of the Bankruptcy Rules or otherwise. As set forth above, the payments proposed herein are essential to prevent potentially irreparable damage to the Debtor's operations, value and ability to reorganize. Accordingly, the Debtor submits that ample cause exists to justify a waiver of any stay imposed by Bankruptcy Rule 6004(h), to the extent it applies, or otherwise.

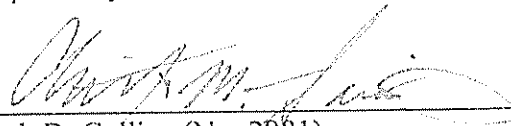
### NOTICE

35. The Debtor has provided notice of this Motion by facsimile and/or overnight mail to: (a) the Office of the United States Trustee for the District of Delaware; (b) each of the Debtor's creditors holding the twenty (20) largest unsecured claims; (c) counsel to the Debtor's prepetition and proposed postpetition secured lender; (d) the Internal Revenue Service; (e) the Taxing Authorities; (f) the Securities and Exchange Commission; (g) the United States Department of Justice; and (h) the Cash Management Banks. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Rule 9013-1(m) of the Local Rules for the United States Bankruptcy Court, District of Delaware (the "Local Rules"). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is required.

WHEREFORE, for the reasons set forth herein and in the First Day Affidavit, the Debtor respectfully requests that the Court enter interim and final orders, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, (a) authorizing, but not requiring, the Debtor to remit and pay prepetition Taxes and Fees as the Debtor, in its discretion, deems necessary; and (b) authorizing financial institutions to receive, process, honor and pay all checks issued and electronic payment requests made relating to the foregoing, (c) authorizing the Debtor to seek a refund of such Taxes that the Debtor has overpaid, and (d) granting such other and further relief as the Court deems just and proper.

Dated: November 16, 2009  
Wilmington, Delaware

Respectfully submitted,



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Mark D. Collins (No. 2981)  
Michael J. Merchant (No. 3854)  
Christopher M. Samis (No. 4909)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

*Proposed Attorneys for the Debtor and  
Debtor in Possession*

**EXHIBIT A**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
 )  
deCODE genetics, Inc.<sup>1</sup> ) Case No. 09-\_\_\_\_\_ ( )  
 )  
 )  
Debtor. )

INTERIM ORDER PURSUANT TO SECTIONS 105(a) AND 363(b)  
OF THE BANKRUPTCY CODE FOR AUTHORIZATION  
TO PAY PREPETITION TAXES AND FEES

Upon consideration of the *Motion of Debtor and Debtor in Possession Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code for Authorization to Pay Prepetition Taxes and Fees* (the "Motion")<sup>2</sup>, filed by the above-captioned debtor and debtor in possession (the "Debtor"), in the above-captioned chapter 11 case; and upon the *Affidavit of Dr. Kari Stefansson, Chief Executive Officer and President of Debtor and Debtor in Possession, in Support of the First Day Motions*; and the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), and (iii) notice of the Motion was sufficient under the circumstances and that no other or further notice need be provide; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefore,

It is hereby ORDERED that,

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<sup>1</sup> The debtor in this case, along with the last four digits of the federal tax identification number for the debtor, is deCODE genetics, Inc. (6704).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

1. The Motion is granted on an interim basis to the extent provided herein until such time as the Court conducts a final hearing on this matter (the "Final Hearing Date").

2. The Final Hearing Date shall be on \_\_\_\_\_, 2009 at \_\_:\_\_ a.m./p.m. prevailing Eastern Time and any objections or responses to the Motion shall be filed on or before five (5) business days prior to the Final Hearing Date and served on the parties required by Local Rule 2002-1(b).

3. The Debtor is authorized, but not directed, to pay and remit to various taxing authorities (collectively, the "Taxing Authorities") (a) Taxes as the Debtor, in its discretion, deems necessary as well as any Fees; and (b) authorizing financial institutions to receive, process, honor and pay all checks issued and electronic payment requests made relating to the foregoing, without regard to whether such Taxes and Fees accrued or arose before or after the Petition Date.

4. The Debtor is authorized, but not directed, to pay to the Taxing Authorities prepetition Taxes and Fees in an interim amount not to exceed \$10,000 in the aggregate during the interim period from the date of this Order until the date that a final order is entered on this matter, unless otherwise ordered by the Court.

5. To the extent the Debtor has overpaid Taxes and Fees, the Debtor is authorized to seek refunds.

6. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtor maintains its accounts relating to the payment of the claims that the Debtor request authority to pay in the Motion are authorized and directed to honor checks presented for payment and to honor all fund transfer requests made by the Debtor related thereto, to the extent that sufficient funds are on deposit in such accounts.

7. Notwithstanding anything to contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtor under any approved debtor in possession financing facility, any budget in connection therewith and any order regarding the use of cash collateral.

8. Nothing in the Motion or this Order, nor as a result of the Debtor's payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtor; (b) a waiver of the Debtor's rights to dispute any claim; or (c) an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

9. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

10. The requirements set forth in Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") are satisfied by the contents of the Motion.

11. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062 or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: November \_\_\_\_, 2009  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
 )  
deCODE genetics, Inc.<sup>1</sup> ) Case No. 09-\_\_\_\_\_ ( )  
 )  
 )  
Debtor. )

FINAL ORDER PURSUANT TO SECTIONS 105(a) AND 363(b)  
OF THE BANKRUPTCY CODE FOR AUTHORIZATION  
TO PAY PREPETITION TAXES AND FEES

Upon consideration of the *Motion of Debtor and Debtor in Possession Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code for Authorization to Pay Prepetition Taxes and Fees* (the "Motion")<sup>2</sup>, filed by the above-captioned debtor and debtor in possession (the "Debtor"), in the above-captioned chapter 11 case; and upon the *Affidavit of Dr. Kari Stefansson, Chief Executive Officer and President of Debtor and Debtor in Possession, in Support of the First Day Motions*; and the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), and (iii) notice of the Motion was sufficient under the circumstances and that no other or further notice need be provide; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefore,

It is hereby ORDERED that,

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<sup>1</sup> The debtor in this case, along with the last four digits of the federal tax identification number for the debtor, is deCODE genetics, Inc. (6704).

<sup>2</sup> Unless stated otherwise, all capitalized terms not defined herein shall have the same meaning as set forth in the Motion.

1. The Debtor is authorized, but not directed, to pay and remit to various taxing authorities (collectively, the "Taxing Authorities") (a) Taxes as the Debtor, in its discretion, deems necessary as well as any Fees; and (b) authorizing financial institutions to receive, process, honor and pay all checks issued and electronic payment requests made relating to the foregoing, without regard to whether such Taxes and Fees accrued or arose before or after the Petition Date.

2. The Debtor is authorized, but not directed, to pay to the Taxing Authorities prepetition Taxes and Fees in an interim amount not to exceed \$200,000 in the aggregate.

3. To the extent the Debtor has overpaid Taxes and Fees, the Debtor is authorized to seek refunds.

4. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtor maintains its accounts relating to the payment of the claims that the Debtor request authority to pay in the Motion are authorized and directed to honor checks presented for payment and to honor all fund transfer requests made by the Debtor related thereto, to the extent that sufficient funds are on deposit in such accounts.

5. Notwithstanding anything to contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtor under any approved debtor in possession financing facility, any budget in connection therewith and any order regarding the use of cash collateral.

6. Nothing in the Motion or this Order, nor as a result of the Debtor's payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtor; (b) a waiver of the Debtor's rights to dispute

any claim; or (c) an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

7. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

8. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062 or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: November \_\_\_\_, 2009  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
deCODE genetics, Inc. <sup>1</sup>	)	Case No. 09-14063 (PJW)
	)	
	)	
Debtor.	)	Re: Docket No. 4

INTERIM ORDER PURSUANT TO SECTIONS 105(a) AND 363(b)  
OF THE BANKRUPTCY CODE FOR AUTHORIZATION  
TO PAY PREPETITION TAXES AND FEES

Upon consideration of the *Motion of Debtor and Debtor in Possession Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code for Authorization to Pay Prepetition Taxes and Fees* (the "Motion")<sup>2</sup>, filed by the above-captioned debtor and debtor in possession (the "Debtor"), in the above-captioned chapter 11 case; and upon the *Affidavit of Dr Kari Stefansson, Chief Executive Officer and President of Debtor and Debtor in Possession, in Support of the First Day Motions*; and the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), and (iii) notice of the Motion was sufficient under the circumstances and that no other or further notice need be provide; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefore,

It is hereby ORDERED that,

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<sup>1</sup> The debtor in this case, along with the last four digits of the federal tax identification number for the debtor, is deCODE genetics, Inc (6704).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

1. The Motion is granted on an interim basis to the extent provided herein until such time as the Court conducts a final hearing on this matter (the "Final Hearing Date").

2. The Final Hearing Date shall be on December 9 2009 at 10:30 a.m./p.m. prevailing Eastern Time and any objections or responses to the Motion shall be filed on or before five (5) business days prior to the Final Hearing Date and served on the parties required by Local Rule 2002-1(b).

3. The Debtor is authorized, but not directed, to pay and remit to various taxing authorities (collectively, the "Taxing Authorities") (a) Taxes as the Debtor, in its discretion, deems necessary as well as any Fees; and (b) authorizing financial institutions to receive, process, honor and pay all checks issued and electronic payment requests made relating to the foregoing, without regard to whether such Taxes and Fees accrued or arose before or after the Petition Date.

4. The Debtor is authorized, but not directed, to pay to the Taxing Authorities prepetition Taxes and Fees in an interim amount not to exceed \$10,000 in the aggregate during the interim period from the date of this Order until the date that a final order is entered on this matter, unless otherwise ordered by the Court.

5. To the extent the Debtor has overpaid Taxes and Fees, the Debtor is authorized to seek refunds.

6. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtor maintains its accounts relating to the payment of the claims that the Debtor request authority to pay in the Motion are authorized and directed to honor checks presented for payment and to honor all fund transfer requests made by the Debtor related thereto, to the extent that sufficient funds are on deposit in such accounts.

7. Notwithstanding anything to contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtor under any approved debtor in possession financing facility, any budget in connection therewith and any order regarding the use of cash collateral.

8. Nothing in the Motion or this Order, nor as a result of the Debtor's payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtor; (b) a waiver of the Debtor's rights to dispute any claim; or (c) an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

9. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

10. The requirements set forth in Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") are satisfied by the contents of the Motion.

11. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062 or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: November 18, 2009  
Wilmington, Delaware

  
\_\_\_\_\_  
THE HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE